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Testimony of Marcie Lipsitt on Behalf of the Michigan Alliance for Special Education  
Concerns Regarding the Michigan Department of Education, Office of Special Education and the  
Department's Processes for Accepting and Investigating MARSE Part 8 and the IDEA Part B  
Special Education Complaints  
Before the Michigan House Oversight Committee  
September 23, 2014

Good afternoon Chairman McMillin and esteemed members of the Oversight Committee:

On behalf of myself, Michigan's 200,000 school-age students with disabilities, their parents and the entire stakeholder community, I want to thank you for convening an Oversight Committee meeting and considering my concerns respective to the Michigan Department of Education, Office of Special Education's processes for accepting and investigating special education complaints pursuant to Part 8 of the Michigan Administrative Rules for Special Education ("MARSE") and Part B of the Individuals with Disabilities Education Act ("IDEA") 2004. On a personal note, I want to thank Chairman McMillin for reaching out one year ago to hear the concerns of a troubled and frustrated advocate, parent of a child with special needs and lifelong Michigan citizen.

It is important for the Committee to recognize that the *Michigan Administrative Rules for Special Education* ("MARSE") pursuant to special education complaints are "supplemented with the *Individuals with Disabilities Education Act* ("IDEA") 2004 34 CFR §§300.151-155.. As the

MARSE pertain to the *IDEA 2004*, they do not exceed the federal law pursuant to the complaint rules.

I have filed a significant number of special education complaints over the past three years. I have not kept track of the numbers. The MDE-OSE inflates the number that I have filed, by counting complaints I have filed more than once, as new complaints. Why have I filed a complaint more than once? Simply because the MDE-OSE has been dismissing complaints, and in my quest to see school districts and ISDs follow our state and federal rules, I have filed and refiled special education systemic complaints.

My concerns are with the MDE-OSE's investigation of special education complaints:

- ❖ MARSE Part 1 General Provisions "Supplemented With Selected IDEA Federal Regulations"
- ✓ MARSE R 340.1701 Rule 1. Any public agency in the state, as those agencies are defined at 34 C.F.R. 300.33 of the regulations implementing the *Individuals with Disabilities Education Act, 20 U.S.C. chapter 33 1400 et seq.*, shall comply with these rules; all provisions of the state's application for federal funds under Part B and Part C of the *Individuals with Disabilities Education Act, 20 U.S.C. chapter 33, 1400 et seq.*: the requirements of Part B and Part C of the *Individuals with Disabilities Education Act*, 34 C.F.R. part 300 and 34 C.F.R. part 303, which are adopted by reference in these rules.
- ✓ January 4, 2013, I submitted a special education systemic complaint against the **Muskegon Heights Public Schools and Muskegon Heights Public Schools Academy**

(exhibit A, MDE C-7514-13). I crafted both complaints based upon concerns raised by a Muskegon resident and former member of the MI House of Representatives. The allegations and facts were as broad as daylight. There were eleven allegations and noncompliance in the IEPs of 167 students. Every student had been denied a “free appropriate public education.” The MDE-OSE accepted these complaints; expanded the allegations; investigated; issued findings of fact and final reports that included corrective action plans and proof of compliance,(Exhibit B)

- ✓ Following the success of my **Muskegon Heights Public School District** and **Muskegon Heights Public Schools Academy** complaints, between April 7, 2013 and July 28, 2014, I crafted and filed systemic complaints against the **Southfield Public Schools, Oak Park Schools, City of Highland Park Schools, School District of the City of Pontiac Public Schools, Taylor Public Schools and Buena Vista School District, Hamtramck Public Schools, the Macomb ISD and constituent school districts, charters and public school academies, the Wayne RESA, the Dearborn City School District and the Education Achievement Authority** (Exhibits C, D, E, F, G, H, I, J, K, L, M,) . The MDE-OSE dismissed every single complaint and based upon a lack of “facts.” I attempted to tighten them up and refiled every complaint, again and again. The MDE dismissed based upon “facts.” I sent emails to the MDE-OSE asking for guidance and clarification. Why had my Muskegon Heights complaints been accepted and investigated while these had been dismissed. I asked for clarification on why my complaints were dismissed in whole, when every complaint included allegations with detailed facts. My emails went unanswered. My complaints included my willingness to go to resolution or mediation. Not once did any of

the aforementioned schools districts or the MDE respond to my requests. My complaints were dismissed. My emails left unanswered.

- ✓ On July 22, 2013, August 1, 2013 and August 19, 2013, I submitted special education complaints against the MDE-OSE (Cases: 13-00312, 13-00314, 13-00343 and 13-00323), and alleging the Department had set forth a different standard for the systemic complaints submitted following the Muskegon Heights Public Schools Academy (Exhibit N, O, P.). The MDE-OSE found itself in compliance without responding to my allegation regarding the Department's acceptance and investigation of the Muskegon Heights complaint. The MDE danced around that allegation by identifying other individual complaints that had been accepted and investigated (Exhibit Q).
- ✓ August 5, 2013 and September 30, 2013, I submitted special education systemic complaints against the EAA that identified a student by name ("R.B.") and expanded the allegations to include other students, (Exhibit R, S, T.). These complaints the MDE-OSE investigated (Cases; 13-00020, 13-00381, 13-00383) and identified that this student and other students had not received occupational therapy, physical therapy, speech, social work and a myriad of violations. The same allegations in my previous EAA complaints that were dismissed for a lack of "facts."
- ✓ In my three EAA complaints that were investigated and corrective action required, only 13-00383 delivered any corrective action to "1" student. The other two complaints, 13-00020 and 13-00381 have not delivered compensatory education to the named student or any other (Exhibit U). These cases remain open.

- ✓ On February 27, 2014, I filed a special education complaint with parents in the Grosse Pointe Public Schools on February 27, 2014, Case: 14-00085 (Exhibit V). The MDE-OSE never investigated, issued findings of fact or a final report. This case remains open.
- ✓ On September 9, 2013, I filed a special education complaint against the MDE-OSE for failing to offer to go to resolution or mediation on even one of my systemic complaints filed against them over the past year, (Case: 13-00357). This complaint was dismissed as the MDE-OSE's "Special Education Problem Solving Process," is only considered a procedure that is "mutually agreeable", (Exhibit W). The fact that this "procedure" urges districts and parents to go to resolution or mediation was of no consequence. The MDE-OSE does not hold themselves to the same standard as parents and districts.
- ✓ On June 9, 2014, I filed a special education complaint (Case: 14-00270) against the MDE-OSE for failing to follow the special education complaint rules pursuant to MARSE R 340.1852 "In accordance with the IDEA 34 CFR 300.152" 300.152(a)(4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part 8 of the Act or of this part; and (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains---(i) Findings of fact and conclusions; and (ii) The reasons for the SEA's final decision The MDE-OSE accepted this complaint, (Case: 14-00270) and found themselves in compliance on all allegations, (Exhibit X). The OSE determined that they were not required to issue a findings of fact or a final report.
- ✓ On August 25, 2014, I filed another complaint against the MDE-OSE (Case: 14-00341). I alleged that the Department had violated the complaint rules, *MARSE R. 340.1852* and the *IDEA 2004 34 C F R §300.152(a)(5)(i)(ii),(b)(2)(ii)(iii)*, that requires a State

Educational Agency to issue “findings of fact and conclusions; and the reasons for the SEA’s final decision,” or “Negotiations; and Corrective Action to achieve compliance,” in their investigation of Case: 14-00270). On September 2, 2014, the MDE dismissed my complaint and stated, “The following allegation does not fall within our jurisdiction. (Exhibit Y). I sent the MDE-OSE’s final report on 14-00270 to the United States Department of Education, Office of Special Education Programs and it has been accepted for a formal policy review.

- ✓ I assisted a Birmingham parent with a special education complaint in September 2013, Case: 13-00355 (Exhibit Z). The MDE-OSE found the Birmingham Public Schools in compliance. The MDE-OSE’s findings of compliance were incongruent with the MARSE and the IDEA 2004. On June, 2014, I assisted the parent with another complaint against the MDE-OSE for allegedly failing to apply the legal standards in the MARSE and the IDEA 2004 to their findings of fact and final decision on Case: 13-00355. On June 24, 2014 the MDE-OSE issued a letter and dismissed this complaint. The Department would not review their findings of fact and final decision. They simply compared the complaints filed and refused to investigate.
- ❖ MARSE R 340.1855 "In accordance with the IDEA 34 CFR 300.155" (1) If a public agency fails to correct known violations of law in a timely manner, or fails to cooperate with the department or the intermediate school district during the conduct of its investigation, or presents known falsification of fact, or continues repetition of similar violations, the department shall do 1 or more of the following: (a) If the public agency in violation is a local school district or a public school academy, then the department shall direct the intermediate school district to provide complying programs and services

pursuant to section 1702 of the 1976 PA 451, MC 380.1702 (b) If the public agency in violation is an intermediate school district, the department may withdraw the authority of the intermediate school district to operate a program that is in noncompliance and simultaneously require the public agency of residence to place the affected students or students in an appropriate program. (c) Withhold federal funds under part B of the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33, 1400, et seq. (d) Apply other penalties under 1976 PA 94, MCL 388.1601, or any other governing statute. (f) Withhold, withdraw, or suspend such endorsements, approvals, credentials, grants, or authorizations pertaining to special education personnel or projects that the department, or its designee, had authority to grant, as authorized by, and in accordance with, the procedures set by law. (g) Seek enforcement of the corrective action in a court of appropriate jurisdiction.

- ✓ One of the most egregious examples of the MDE-OSE's malfeasance is pursuant to a Southfield Public Schools Case, dated May 31, 2012. This case is particularly troubling as the MDE-OSE did not investigate the complaints and the parent filed a complaint against the MDE-OSE, C-7314-12. The MDE-OSE found itself in noncompliance for failing to follow the complaint rules (Exhibit BB). The MDE-OSE then investigated (C-7228-11 and C-7315-12), and found Southfield noncompliant and ordered corrective action (Exhibit CC). Southfield did not comply with the corrective action (Exhibit DD). The MDE-OSE issued a redirect and ordered 280 hours of speech at one of two private speech clinics (Exhibit EE). Southfield then appealed the MDE-OSE's corrective action in Oakland County District Court. On May 30, 2013 and exactly one year later, Oakland County District Court Judge Wendy Potts ruled in the MDE-OSE's favor (Exhibit FF).

The MDE-OSE still did not order the Southfield Public Schools to provide the 280 hours of compensatory speech. The original violation dated back to March 2011. This case is still open. The student has yet to receive the compensatory speech service.

Thank you for the opportunity to be heard on behalf of Michigan's children with disabilities and their parents. My hope is that the Michigan legislature will consider the need for legislation to restore elected authority at the Michigan Department of Education, and to hold the Michigan Department of Education, Office of Special Education accountable to the MARSE and the IDEA, and to restore a respectful environment for parents, advocates and concerned citizens.

Respectfully submitted by,

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